

(a) There is an agreement or understanding, implied or explicit, that the money or thing of value will be passed on to the officers, employees, or representatives, or

(b) It is obvious by the very nature of the item given (such as a free trip) that a pass through to the officers, employees, or representatives is clearly contemplated, or

(c) The records of the recipient wholesaler do not accurately reflect such money or item as an asset or the wholesale entity, thus being subject to all ensuing tax consequences as distinguished from the receipt of the money or item as a personal asset of an officer, employee, or representative.

#### **§ 10.24 Sales promotion contests.**

Sales contests sponsored by an industry member which offer prizes directly or indirectly to trade buyer officers, employees or representatives are inducements within the meaning of the Act.

### **Subpart D—Exclusion**

SOURCE: T.D. ATF-364, 60 FR 20427, Apr. 26, 1995, unless otherwise noted.

#### **§ 10.51 Exclusion, in general.**

(a) Exclusion, in whole or in part occurs:

(1) When a practice by an industry member, whether direct, indirect, or through an affiliate, places (or has the potential to place) trade buyer independence at risk by means of a tie or link between the industry member and trade buyer or by any other means of industry member control over the trade buyer, and

(2) Such practice results in the trade buyer purchasing less than it would have of a competitor's product.

(b) Section 10.52 lists practices that create a tie or link that places trade buyer independence at risk. Section 10.53 is reserved and will list practices not resulting in exclusion. Section 10.54 lists the criteria used for determining whether other practices can put trade buyer independence at risk.

#### **§ 10.52 Practice which puts trade buyer independence at risk.**

The practice specified in this section is deemed to place trade buyer independence at risk within the description of exclusion in § 10.51: Industry member payments of money to the employee(s) of a trade buyer without the knowledge or consent of the trade buyer-employer in return for the employee agreeing to order distilled spirits, wine, or malt beverages from the industry member. The practice enumerated here is an example and does not constitute a complete list of those situations which result in such control.

#### **§ 10.53 Practices not resulting in exclusion. [Reserved]**

#### **§ 10.54 Criteria for determining trade buyer independence.**

The criteria specified in this section are indications that a particular practice between an industry member and an officer, employee, or representative of a trade buyer, other than those in § 10.52, places trade buyer independence at risk. A practice need not meet all of the criteria specified in this section in order to place trade buyer independence at risk.

(a) The practice restricts or hampers the free economic choice of a trade buyer to decide which products to purchase or the quantity in which to purchase them for sale to retailers and consumers.

(b) The industry member obligates the trade buyer to participate in the promotion to obtain the industry member's product.

(c) The trade buyer has a continuing obligation to purchase or otherwise promote the industry member's product.

(d) The trade buyer has a commitment not to terminate its relationship with the industry member with respect to purchase of the industry member's products.

(e) The practice involves the industry member in the day-to-day operations of

the trade buyer. For example, the industry member controls the trade buyer's decisions on which brand of products to purchase, the pricing of products, or the manner in which the products will be displayed on the trade buyer's premises.

(f) The practice is discriminatory in that it is not offered to all trade buyers in the local market on the same terms without business reasons present to justify the difference in treatment.

## PART 11—CONSIGNMENT SALES

### Subpart A—Scope of Regulations

#### Sec.

- 11.1 General.
- 11.2 Territorial extent.
- 11.3 Application.
- 11.4 Jurisdictional limits.
- 11.5 Delegations of the Administrator.
- 11.6 Administrative provisions.

### Subpart B—Definitions

- 11.11 Meaning of terms.

### Subpart C—Unlawful Sales Arrangements

- 11.21 General.
- 11.22 Consignment sales.
- 11.23 Sales conditioned on the acquisition of other products.
- 11.24 Other than a bona fide sale.

### Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

- 11.31 General.

#### EXCHANGES AND RETURNS FOR ORDINARY AND USUAL COMMERCIAL REASONS

- 11.32 Defective products.
- 11.33 Error in products delivered.
- 11.34 Products which may no longer be lawfully sold.
- 11.35 Termination of business.
- 11.36 Termination of franchise.
- 11.37 Change in product.
- 11.38 Discontinued products.
- 11.39 Seasonal dealers.

#### EXCHANGES AND RETURNS FOR REASONS NOT CONSIDERED ORDINARY AND USUAL

- 11.45 Overstocked and slow-moving products.
- 11.46 Seasonal products.

AUTHORITY: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205.

SOURCE: T.D. ATF–74, 45 FR 63258, Sept. 23, 1980, unless otherwise noted.

## Subpart A—Scope of Regulations

### § 11.1 General.

The regulations in this part, issued pursuant to section 105 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify arrangements which are consignment sales under section 105(d) of the Act and contain guidelines concerning return of distilled spirits, wine and malt beverages from a trade buyer. This part does not attempt to enumerate all of the practices prohibited by section 105(d) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

[T.D. ATF–364, 60 FR 20427, Apr. 26, 1995]

### § 11.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

### § 11.3 Application.

(a) *General.* The regulations in this part apply to transactions between industry members and trade buyers.

(b) *Transactions involving State agencies.* The regulations in this part apply to transactions involving State agencies operating as retailers or wholesalers.

### § 11.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) The industry member sells, offers for sale, or contracts to sell to a trade buyer engaged in the sale of distilled spirits, wines, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis other than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or the agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages; and,

(2) If: (i) The sale, purchase, offer or contract is made in the course of interstate or foreign commerce; or

(ii) The industry member engages in using the practice to such an extent as